

R.D.G. asks the Utah Labor Commission to reconsider its prior decision regarding Mr. G.'s claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this matter pursuant to Utah Code Annotated §63-46b-13.

BACKGROUND AND ISSUES PRESENTED

On January 17, 2006, the Labor Commission reversed Judge Sessions' award of additional disability compensation to Mr. G. for injuries he suffered while working for Trimco on July 22, 1983. Specifically, the Commission concluded that Judge Sessions had erred in raising and deciding *sua sponte* the issues of Mr. G.'s 1) compensation rate and 2) right to additional temporary total disability compensation. The Commission also concluded Judge Sessions had erred in awarding additional permanent partial disability compensation to Mr. G..

In requesting reconsideration, Mr. G. argues the two issues identified above were properly presented to Judge Sessions for decision. On that basis, Mr. G. further argues that the Commission should evaluate the merits of those issues, taking into consideration certain documentary evidence that Mr. G. submitted after the evidentiary hearing.

DISCUSSION

The essential fact missing from Mr. G.'s argument is that, at the beginning of the evidentiary hearing on his claim, Mr. G. affirmatively stated to Judge Sessions and Trimco that the claim was limited to permanent partial disability compensation for an increased impairment rating. Consequently, neither party submitted evidence or argument on any other issues, nor did Judge Sessions inquire into any other issues.

In light of the limits Mr. G. placed on his claim, Trimco was not required to produce evidence on any other issues. Judge Sessions erred, not by failing to pursue other issues during the evidentiary hearing, but in later deciding additional issues that Mr. G. had excluded from consideration. And because such additional issues were waived by Mr. G., the Commission will not consider post-hearing evidence on those issues.

As a final point, Mr. G. suggests that he should be allowed to reopen his claim because he was not represented by counsel at the evidentiary hearing. However, it appears Mr. G. chose to represent himself at the evidentiary hearing. By all accounts, he is very capable and has substantial past experience with the workers' compensation system. Under these circumstances, the Commission does not consider Mr. G.'s representation of himself as a basis to reopen this proceeding.

ORDER

The Commission reaffirms its previous decision in this matter and denies Mr. G.'s request for reconsideration. It is so ordered.

Dated this 28th day of February, 2006.

R. Lee Ellertson
Utah Labor Commissioner